



Rep. Michael J. Zalewski

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1 AMENDMENT TO SENATE BILL 1692

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1692 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Currency Exchange Act is amended by  
5 changing Section 3.1 as follows:

6 (205 ILCS 405/3.1) (from Ch. 17, par. 4805)

7 Sec. 3.1. Nothing in this Act shall prevent a currency  
8 exchange from rendering State or Federal income tax service;  
9 nor shall the rendering of such service be considered a  
10 violation of this Act if such service be rendered either by the  
11 proprietor, any of his employees, or a licensed, regulated tax  
12 service approved by the Internal Revenue Service. For the  
13 purpose of this Section, "tax service" does not mean to make or  
14 offer to make a refund anticipation loan as defined by the Tax  
15 Refund Anticipation Loan Reform ~~Disclosure~~ Act.

16 (Source: P.A. 97-315, eff. 1-1-12.)

1           Section 10. The Residential Mortgage License Act of 1987 is  
2 amended by changing Section 5-8 as follows:

3           (205 ILCS 635/5-8)

4           Sec. 5-8. Prepayment penalties.

5           (a) No licensee may make, provide, or arrange a mortgage  
6 loan with a prepayment penalty unless the licensee offers the  
7 borrower a loan without a prepayment penalty, the offer is in  
8 writing, and the borrower initials the offer to indicate that  
9 the borrower has declined the offer. In addition, the licensee  
10 must disclose the discount in rate received in consideration  
11 for a mortgage loan with the prepayment penalty.

12           (b) If a borrower declines an offer required under  
13 subsection (a) of this Section, the licensee may include, except as prohibited by Section 30 of the High Risk Home Loan Act, a prepayment penalty that extends no longer than three  
14 years or the first change date or rate adjustment of a variable  
15 rate mortgage, whichever comes earlier, provided that, if a  
16 prepayment is made during the fixed rate period, the licensee  
17 shall receive an amount that is no more than:  
18  
19

20           (1) 3% of the total loan amount if the prepayment is  
21 made within the first 12-month period following the date  
22 the loan was made;

23           (2) 2% of the total loan amount if the prepayment is  
24 made within the second 12-month period following the date

1 the loan was made; or

2 (3) 1% of the total loan amount if the prepayment is  
3 made within the third 12-month period following the date  
4 the loan was made, if the fixed rate period extends 3  
5 years.

6 (c) Notwithstanding any provision in this Section,  
7 prepayment penalties are prohibited in connection with the sale  
8 or destruction of a dwelling secured by a residential mortgage  
9 loan.

10 (d) This Section applies to loans made, refinanced,  
11 renewed, extended, or modified on or after the effective date  
12 of this amendatory Act of the 95th General Assembly.

13 (Source: P.A. 95-691, eff. 6-1-08.)

14 Section 15. The High Risk Home Loan Act is amended by  
15 changing Sections 10, 30, 55, 80, and 145 and by adding  
16 Sections 35, 35.5, 80.5, 80.6, and 90.5 as follows:

17 (815 ILCS 137/10)

18 Sec. 10. Definitions. As used in this Act:

19 "Approved credit counselor" means a credit counselor  
20 approved by the Director of Financial Institutions.

21 "Bona fide discount points" means loan discount points that  
22 are knowingly paid by the consumer for the purpose of reducing,  
23 and that in fact result in a bona fide reduction of, the  
24 interest rate or time price differential applicable to the

1 mortgage.

2 "Borrower" means a natural person who seeks or obtains a  
3 high risk home loan.

4 "Commissioner" means the Commissioner of the Office of  
5 Banks and Real Estate.

6 "Department" means the Department of Financial  
7 Institutions.

8 "Director" means the Director of Financial Institutions.

9 "Good faith" means honesty in fact in the conduct or  
10 transaction concerned.

11 "High risk home loan" means a consumer credit transaction,  
12 other than a reverse mortgage, that is secured by the  
13 consumer's principal dwelling if: ~~home equity loan in which~~ (i)  
14 at the time of origination, the annual percentage rate exceeds  
15 by more than 6 percentage points in the case of a first lien  
16 mortgage, or by more than 8 percentage points in the case of a  
17 junior mortgage, the average prime offer rate, as defined in  
18 Section 129C(b) (2) (B) of the federal Truth in Lending Act, for  
19 a comparable transaction as of the date on which the interest  
20 rate for the transaction is set, ~~yield on U.S. Treasury~~  
21 securities having comparable periods of maturity to the loan  
22 maturity as of the fifteenth day of the month immediately  
23 preceding the month in which the application for the loan is  
24 received by the lender or (ii) the loan documents permit the  
25 creditor to charge or collect prepayment fees or penalties more  
26 than 36 months after the transaction closing or such fees

1 exceed, in the aggregate, more than 2% of the amount prepaid,  
2 or (iii) the total points and fees payable in connection with  
3 the transaction, other than bona fide third-party charges not  
4 retained by the mortgage originator, creditor, or an affiliate  
5 of the mortgage originator or creditor, by the consumer at or  
6 before closing will exceed (1) the greater of 5% of the total  
7 loan amount in the case of a transaction for \$20,000 or more or  
8 (2) the lesser of 8% of the total loan amount or \$1,000 (or  
9 such other dollar amount as prescribed by federal regulation  
10 pursuant to the federal Dodd-Frank Act) in the case of a  
11 transaction for less than \$20,000, except that, with respect to  
12 all transactions, bona fide loan discount points may be  
13 excluded as provided for in Section 35 of this Act. or \$800.  
14 ~~The \$800 figure shall be adjusted annually on January 1 by the~~  
15 ~~annual percentage change in the Consumer Price Index for All~~  
16 ~~Urban Consumers for all items published by the United States~~  
17 ~~Department of Labor. "High risk home loan" does not include a~~  
18 ~~loan that is made primarily for a business purpose unrelated to~~  
19 ~~the residential real property securing the loan or to an~~  
20 ~~open-end credit plan subject to 12 CFR 226 (2000, no subsequent~~  
21 ~~amendments or editions are included).~~

22 ~~"Home equity loan" means any loan secured by the borrower's~~  
23 ~~primary residence where the proceeds are not used as purchase~~  
24 ~~money for the residence.~~

25 "Lender" means a natural or artificial person who  
26 transfers, deals in, offers, or makes a high risk home loan.

1 "Lender" includes, but is not limited to, creditors and brokers  
2 who transfer, deal in, offer, or make high risk home loans.

3 "Lender" does not include purchasers, assignees, or subsequent  
4 holders of high risk home loans.

5 "Office" means the Office of Banks and Real Estate.

6 "Points and fees" means all items considered ~~required~~ to be  
7 ~~disclosed as~~ points and fees under 12 CFR 226.32 (2000, or as  
8 initially amended pursuant to Section 1431 of the federal  
9 Dodd-Frank Act with no subsequent amendments or editions  
10 included, whichever is later); ~~the premium of any single~~  
11 ~~premium credit life, credit disability, credit unemployment,~~  
12 ~~or any other life or health insurance that is financed directly~~  
13 ~~or indirectly into the loan; and compensation paid directly or~~  
14 indirectly by a consumer or creditor to a mortgage broker from  
15 any source, including a broker that originates a loan in its  
16 own name in a table-funded transaction, not otherwise included  
17 in 12 CFR 226.4; the maximum prepayment fees and penalties that  
18 may be charged or collected under the terms of the credit  
19 transaction; all prepayment fees or penalties that are incurred  
20 by the consumer if the loan refinances a previous loan made or  
21 currently held by the same creditor or an affiliate of the  
22 creditor; and premiums or other charges payable at or before  
23 closing or financed directly or indirectly into the loan for  
24 any credit life, credit disability, credit unemployment,  
25 credit property, other accident, loss of income, life, or  
26 health insurance or payments directly or indirectly for any

1 debt cancellation or suspension agreement or contract, except  
2 that insurance premiums or debt cancellation or suspension fees  
3 calculated and paid in full on a monthly basis shall not be  
4 considered financed by the creditor. "Points and fees" does not  
5 include any insurance premium provided by an agency of the  
6 federal government or an agency of a state; any insurance  
7 premium paid by the consumer after closing; and any amount of a  
8 premium, charge, or fee that is not in excess of the amount  
9 payable under policies in effect at the time of origination  
10 under Section 203(c)(2)(A) of the National Housing Act (12  
11 U.S.C. 1709(c)(2)(A)), provided that the premium, charge, or  
12 fee is required to be refundable on a pro-rated basis and the  
13 refund is automatically issued upon notification of the  
14 satisfaction of the underlying mortgage loan.

15 "Reasonable" means fair, proper, just, or prudent under the  
16 circumstances.

17 "Servicer" means any entity chartered under the Illinois  
18 Banking Act, the Savings Bank Act, the Illinois Credit Union  
19 Act, or the Illinois Savings and Loan Act of 1985 and any  
20 person or entity licensed under the Residential Mortgage  
21 License Act of 1987, the Consumer Installment Loan Act, or the  
22 Sales Finance Agency Act who is responsible for the collection  
23 or remittance for, or has the right or obligation to collect or  
24 remit for, any lender, note owner, or note holder or for a  
25 licensee's own account, of payments, interest, principal, and  
26 trust items (such as hazard insurance and taxes on a

1 residential mortgage loan) in accordance with the terms of the  
2 residential mortgage loan, including loan payment follow-up,  
3 delinquency loan follow-up, loan analysis, and any  
4 notifications to the borrower that are necessary to enable the  
5 borrower to keep the loan current and in good standing.

6 "Total loan amount" has the same meaning as that term is  
7 given in 12 CFR 226.32 and shall be calculated in accordance  
8 with the Federal Reserve Board's Official Staff Commentary to  
9 that regulation.

10 (Source: P.A. 93-561, eff. 1-1-04.)

11 (815 ILCS 137/30)

12 Sec. 30. No prepayment ~~Prepayment~~ penalty. A high risk home  
13 loan may not contain terms under which a consumer must pay a  
14 prepayment penalty for paying all or part of the principal  
15 before the date on which the principal is due. For purposes of  
16 this Section, any method of computing a refund of unearned  
17 scheduled interest is a prepayment penalty if it is less  
18 favorable to the consumer than the actuarial method as that  
19 term is defined by Section 933(d) of the federal Housing and  
20 Community Development Act of 1992, 15 U.S.C. 1615(d). ~~For any~~  
21 ~~loan that is subject to the provisions of this Act and is not~~  
22 ~~subject to the provisions of the Home Ownership and Equity~~  
23 ~~Protection Act of 1994, no lender shall make a high risk home~~  
24 ~~loan that includes a penalty provision for payment made: (i)~~  
25 ~~after the expiration of the 36 month period following the date~~

1 ~~the loan was made; or (ii) that is more than:~~

2 ~~(1) 3% of the total loan amount if the prepayment is~~  
3 ~~made within the first 12-month period following the date~~  
4 ~~the loan was made;~~

5 ~~(2) 2% of the total loan amount if the prepayment is~~  
6 ~~made within the second 12 month period following the date~~  
7 ~~the loan was made; or~~

8 ~~(3) 1% of the total loan amount if the prepayment is~~  
9 ~~made within the third 12-month period following the date~~  
10 ~~the loan was made.~~

11 (Source: P.A. 93-561, eff. 1-1-04.)

12 (815 ILCS 137/35 new)

13 Sec. 35. Bona fide discount points. For the purposes of  
14 determining whether the amount of points and fees meets the  
15 definition of "high risk home loan" under this Act, either the  
16 amounts described in paragraph (1) or (2) of this Section, but  
17 not both, shall be excluded:

18 (1) Up to and including 2 bona fide discount points  
19 payable by the consumer in connection with the mortgage,  
20 but only if the interest rate from which the mortgage's  
21 interest rate will be discounted does not exceed by more  
22 than one percentage point:

23 (A) the average prime offer rate, as defined in  
24 Section 129C of the federal Truth in Lending Act (15  
25 U.S.C. 1639); or

1           (B) if secured by a personal property loan, the  
2           average rate on a loan in connection with which  
3           insurance is provided under Title I of the National  
4           Housing Act (12 U.S.C. 1702 et seq.).

5           (2) Unless 2 bona fide discount points have been  
6           excluded under paragraph (1), up to and including one bona  
7           fide discount point payable by the consumer in connection  
8           with the mortgage, but only if the interest rate from which  
9           the mortgage's interest rate will be discounted does not  
10          exceed by more than 2 percentage points:

11           (A) the average prime offer rate, as defined in  
12           Section 129C of the federal Truth in Lending Act (15  
13           U.S.C. 1639); or

14           (B) if secured by a personal property loan, the  
15           average rate on a loan in connection with which  
16           insurance is provided under Title I of the National  
17           Housing Act (12 U.S.C. 1702 et seq.).

18          Paragraphs (1) and (2) shall not apply to discount points  
19          used to purchase an interest rate reduction unless the amount  
20          of the interest rate reduction purchased is reasonably  
21          consistent with established industry norms and practices for  
22          secondary mortgage market transactions.

23           (815 ILCS 137/35.5 new)

24          Sec. 35.5. No balloon payments. No high risk home loan may  
25          contain a scheduled payment that is more than twice as large as

1 the average of earlier scheduled payments. This Section does  
2 not apply when the payment schedule is adjusted to the seasonal  
3 or irregular income of the consumer.

4 (815 ILCS 137/55)

5 Sec. 55. Financing of points and fees. No lender shall  
6 transfer, deal in, offer, or make a high risk home loan that  
7 finances, directly or indirectly, any points and fees. No  
8 lender shall transfer, deal in, offer, or make a high risk home  
9 loan that finances any prepayment fee or penalty payable by the  
10 consumer in a refinancing transaction if the creditor or an  
11 affiliate of the creditor is the noteholder of the note being  
12 refinanced in excess of 6% of the total loan amount.

13 (Source: P.A. 93-561, eff. 1-1-04.)

14 (815 ILCS 137/80)

15 Sec. 80. Late payment fee. A lender shall not transfer,  
16 deal in, offer, or make a high risk home loan that provides for  
17 a late payment fee, except under the following conditions:

18 (1) the late payment fee shall not be in excess of 4%  
19 5% of the amount of the payment past due;

20 (2) the late payment fee shall only be assessed for a  
21 payment past due for 15 days or more;

22 (3) the late payment fee shall not be imposed more than  
23 once with respect to a single late payment;

24 (4) a late payment fee that the lender has collected

1 shall be reimbursed if the borrower presents proof of  
2 having made a timely payment; and

3 (5) a lender shall treat each payment as posted on the  
4 same business day as it was received by the lender,  
5 servicer, or lender's agent or at the address provided to  
6 the borrower by the lender, servicer, or lender's agent for  
7 making payments.

8 (Source: P.A. 93-561, eff. 1-1-04.)

9 (815 ILCS 137/80.5 new)

10 Sec. 80.5. Coordination with subsequent late fees. If a  
11 payment is otherwise a full payment for the applicable period,  
12 is paid on its due date or within an applicable grace period,  
13 and the only delinquency or insufficiency of payment is  
14 attributable to any late fee or delinquency charge assessed on  
15 any earlier payment, no late fee or delinquency charge may be  
16 imposed on the payment.

17 (815 ILCS 137/80.6 new)

18 Sec. 80.6. Failure to make installment payment. If, in the  
19 case of a loan agreement the terms of which provide that any  
20 payment shall first be applied to any past principal balance,  
21 the consumer fails to make an installment payment and the  
22 consumer subsequently resumes making installment payments but  
23 has not paid all past due installments, the creditor may impose  
24 a separate late payment charge or fee for any principal due

1 (without deduction due to late fees or related fees) until the  
2 default is cured.

3 (815 ILCS 137/90.5 new)

4 Sec. 90.5. Modification and deferral fees prohibited. A  
5 lender, successor in interest, assignee, or any agent of any of  
6 the foregoing may not charge a consumer any fee to modify,  
7 renew, extend, or amend a high risk home loan or to defer any  
8 payment due under the terms of the loan.

9 (815 ILCS 137/145)

10 Sec. 145. Subterfuge prohibited. No lender, with the intent  
11 to avoid the application or provisions of this Act, shall (i)  
12 divide a loan transaction into separate parts, ~~or~~ (ii)  
13 structure a loan transaction as an open-end credit plan or  
14 another form of loan, or (iii) perform any other subterfuge.

15 (Source: P.A. 93-561, eff. 1-1-04.)

16 Section 20. The Tax Refund Anticipation Loan Disclosure Act  
17 is amended by changing Sections 1, 5, 10, and 15 and by adding  
18 Sections 20, 25, 30, 35, and 40 as follows:

19 (815 ILCS 177/1)

20 Sec. 1. Short title. This Act may be cited as the Tax  
21 Refund Anticipation Loan Reform ~~Disclosure~~ Act.

22 (Source: P.A. 92-664, eff. 1-1-03.)

1 (815 ILCS 177/5)

2 Sec. 5. Definitions. The following definitions apply in  
3 this Act:

4 "Consumer" means any natural person who, singly or jointly  
5 with another consumer, is solicited for, applies for, or  
6 receives the proceeds of a refund anticipation loan or refund  
7 anticipation check.

8 "Creditor" means any person who makes a refund anticipation  
9 loan or who takes an assignment of a refund anticipation loan.

10 "Facilitator" means a person who individually or in  
11 conjunction or cooperation with another person: (i) solicits  
12 the execution of ~~makes a refund anticipation loan,~~ processes,  
13 receives, or accepts ~~for delivery~~ an application or agreement  
14 for a refund anticipation loan or refund anticipation check;  
15 (ii) services or collects upon, ~~issues a check in payment of~~  
16 refund anticipation loan or refund anticipation check;  
17 ~~proceeds,~~ or (iii) in any other manner facilitates ~~acts to~~  
18 ~~allow~~ the making of a refund anticipation loan or refund  
19 anticipation check. If there is no third party facilitator  
20 because a creditor directly solicits the execution of,  
21 receives, or accepts an application or agreement for a refund  
22 anticipation loan or refund anticipation check, that creditor  
23 shall be considered a facilitator. "Facilitator" does not  
24 include a bank, savings bank, savings and loan association, or  
25 credit union, ~~or licensee under the Consumer Installment Loan~~

1 ~~Act~~ operating under the laws of the United States or this State  
2 and does not include any person who acts solely as an  
3 intermediary and does not deal with the public in the making of  
4 the refund anticipation loan.

5 "Person" means an individual, a firm, a partnership, an  
6 association, a corporation, or another entity. "Person" does  
7 not, however, mean a bank, savings bank, savings and loan  
8 association, or credit union operating under the laws of the  
9 United States or this State.

10 "Refund anticipation check" means a check, stored value  
11 card, or other payment mechanism: (i) representing the proceeds  
12 of the consumer's tax refund; (ii) which was issued by a  
13 depository institution or other person that received a direct  
14 deposit of the consumer's tax refund or tax credits; and (iii)  
15 for which the consumer has paid a fee or other consideration  
16 for such payment mechanism.

17 ~~"Borrower" means a person who receives the proceeds of a~~  
18 ~~refund anticipation loan.~~

19 "Refund anticipation loan" means a loan that is secured by  
20 or that the creditor arranges ~~arranged~~ to be repaid directly  
21 from the proceeds of the consumer's ~~a borrower's~~ income tax  
22 refund or tax credits ~~refunds~~. "Refund anticipation loan" also  
23 includes any sale, assignment, or purchase of a consumer's tax  
24 refund at a discount or for a fee, whether or not the consumer  
25 is required to repay the buyer or assignee if the Internal  
26 Revenue Service denies or reduces the consumer's tax refund.

1           "Refund anticipation loan fee" means the charges, fees, or  
2 other consideration charged or imposed directly or indirectly  
3 by the creditor ~~facilitator~~ for the making of or in connection  
4 with a refund anticipation loan. This term includes any charge,  
5 fee, or other consideration for a deposit account, if the  
6 deposit account is used for receipt of the consumer's tax  
7 refund to repay the amount owed on the loan. A "refund  
8 anticipation loan fee" does not include charges, fees, or other  
9 consideration charged or imposed in the ordinary course of  
10 business by a facilitator for services that do not result in  
11 the making of a loan, including fees for tax return preparation  
12 and fees for electronic filing of tax returns.

13           "Refund anticipation loan interest rate" means the  
14 interest rate for a refund anticipation loan calculated as  
15 follows: the total amount of refund anticipation loan fees  
16 divided by the loan amount (minus any loan fees), then divided  
17 by the number of days in the loan term, then multiplied by 365  
18 and expressed as a percentage. The total amount of the refund  
19 anticipation loan fee used in this calculation shall include  
20 all refund anticipation loan fees as defined in this Section.  
21 If a deposit account is established or maintained in whole or  
22 in part for the purpose of receiving the consumer's tax refund  
23 to repay the amount owed on a refund anticipation loan: (i) the  
24 maturity of the loan for the purpose of determining the refund  
25 anticipation loan interest rate shall be assumed to be the  
26 estimated date when the tax refund will be deposited in the

1 deposit account; and (ii) any fee charged to the consumer for  
2 such deposit account shall be considered a loan fee and shall  
3 be included in the calculation of the refund anticipation loan  
4 interest rate. If no deposit account is established or  
5 maintained for the repayment of the loan, the maturity of the  
6 loan shall be assumed to be the estimated date when the tax  
7 refund is received by the creditor.

8 (Source: P.A. 92-664, eff. 1-1-03.)

9 (815 ILCS 177/10)

10 Sec. 10. Disclosure requirements. At the time a consumer  
11 ~~borrower~~ applies for a refund anticipation loan or check, a  
12 facilitator shall disclose to the consumer borrower on a  
13 document that is separate from the ~~loan~~ application:

14 (1) the fee for the refund anticipation loan or refund  
15 anticipation check fee schedule;

16 (1.5) for refund anticipation loans, disclosure of the  
17 refund anticipation loan interest rate. The refund  
18 anticipation loan interest rate shall be calculated as set  
19 forth in Section 5 the Annual Percentage Rate utilizing a  
20 10-day time period;

21 (2) the estimated fee for preparing and electronically  
22 filing a tax return;

23 (2.5) for refund anticipation loans, the total cost to  
24 the consumer borrower for utilizing a refund anticipation  
25 loan;

1           (3) for refund anticipation loans, the estimated date  
2 that the loan proceeds will be paid to the consumer  
3 ~~borrower~~ if the loan is approved;

4           (4) for refund anticipation loans, that the consumer  
5 ~~borrower~~ is responsible for repayment of the loan and  
6 related fees in the event the tax refund is not paid or not  
7 paid in full; and

8           (5) for refund anticipation loans, the availability of  
9 electronic filing for the income tax return of the consumer  
10 ~~borrower~~ and the average time announced by the federal  
11 Internal Revenue Service within which the consumer  
12 ~~borrower~~ can expect to receive a refund if the consumer's  
13 ~~borrower's~~ return is filed electronically and the consumer  
14 ~~borrower~~ does not obtain a refund anticipation loan.

15 (Source: P.A. 92-664, eff. 1-1-03; 93-287, eff. 1-1-04.)

16 (815 ILCS 177/15)

17 Sec. 15. Posting of fee schedule and disclosures. ~~Penalty.~~

18 (a) A facilitator shall display a schedule showing the  
19 current fees for refund anticipation loans, if refund  
20 anticipation loans are offered, or refund anticipation checks,  
21 if refund anticipation checks are offered, facilitated at the  
22 office.

23 (b) A facilitator who offers refund anticipation loans  
24 shall display on each fee schedule examples of the refund  
25 anticipation loan interest rates for refund anticipation loans

1 of at least 5 different amounts, such as \$300, \$500, \$1,000,  
2 \$1,500, \$2,000, and \$5,000. The refund anticipation loan  
3 interest rate shall be calculated as set forth in Section 5 of  
4 this Act.

5 (c) A facilitator who offers refund anticipation loans  
6 shall also prominently display on each fee schedule: (i) a  
7 legend, centered, in bold, capital letters, and in one-inch  
8 letters stating: "NOTICE CONCERNING REFUND ANTICIPATION LOANS"  
9 and (ii) the following verbatim statement: "When you take out a  
10 refund anticipation loan, you are borrowing money against your  
11 tax refund. If your tax refund is less than expected, you will  
12 still owe the entire amount of the loan. If your refund is  
13 delayed, you may have to pay additional costs. YOU CAN GET YOUR  
14 REFUND IN 8 TO 15 DAYS WITHOUT PAYING ANY EXTRA FEES AND TAKING  
15 OUT A LOAN. You can have your tax return filed electronically  
16 and your refund direct deposited into your own financial  
17 institution account without obtaining a loan or paying fees for  
18 an extra product."

19 (d) The postings required by this Section shall be made in  
20 no less than 28-point type on a document measuring no less than  
21 16 inches by 20 inches. The postings required by this Section  
22 shall be displayed in a prominent location at each office where  
23 the facilitator is facilitating refund anticipation loans.

24 (e) A facilitator may not facilitate a refund anticipation  
25 loan or refund anticipation check unless (i) the disclosures  
26 required by this Section are displayed and (ii) the fee

1 actually charged for the refund anticipation loan or refund  
2 anticipation check is the same as the fee displayed on the  
3 schedule.

4 ~~Any person who violates this Act is guilty of a petty~~  
5 ~~offense and shall be fined \$500 for each offense. In addition,~~  
6 ~~a facilitator who violates this Act shall be liable to any~~  
7 ~~aggrieved borrower in an amount equal to 3 times the refund~~  
8 ~~anticipation loan fee, plus a reasonable attorney's fee, in a~~  
9 ~~civil action brought in the circuit court by the aggrieved~~  
10 ~~borrower or by the Attorney General on behalf of the aggrieved~~  
11 ~~borrower.~~

12 (Source: P.A. 92-664, eff. 1-1-03.)

13 (815 ILCS 177/20 new)

14 Sec. 20. Advertising and marketing.

15 (a) A facilitator may not market or advertise a refund  
16 anticipation loan without including this language verbatim:

17 "(Name of product) is a loan. You can get your refund in 8  
18 to 15 days without a loan or extra fees if you use e-file and  
19 direct deposit.".

20 For print advertisements, this information must be printed  
21 in type size one-half as large as the largest type size in the  
22 advertisement. For radio and television advertisements, this  
23 information must receive at least 7 seconds of airtime.

24 (b) A facilitator may not market or advertise a refund  
25 anticipation check without including this language verbatim:

1       "The (name of product) costs (fee for RAC). You can get  
2 your refund in the same amount of time without this fee if you  
3 use e-file and direct deposit."

4       For print advertisements, this information must be in type  
5 size one-half as large as the largest type size in the  
6 advertisement. For radio and television advertisements, this  
7 information must receive at least 7 seconds of airtime.

8       (815 ILCS 177/25 new)

9       Sec. 25. Prohibited activities. No person, including any  
10 officer, agent, employee, or representative, shall:

11       (a) Charge or impose any fee, charge, or other  
12 consideration in the making or facilitating of a refund  
13 anticipation loan or refund anticipation check apart from the  
14 fee charged by the creditor or financial institution that  
15 provides the loan or check. This prohibition does not include  
16 any charge or fee imposed by the facilitator to all of its  
17 customers, such as fees for tax return preparation, if the same  
18 fee in the same amount is charged to the customers who do not  
19 receive refund anticipation loans, refund anticipation checks,  
20 or any other tax related financial product.

21       (b) Fail to comply with any provision of this Act.

22       (c) Directly or indirectly arrange for any third party to  
23 charge any interest, fee, or charge related to a refund  
24 anticipation loan or refund anticipation check, other than the  
25 refund anticipation loan or refund anticipation check fee

1 imposed by the creditor, including but not limited to: (i)  
2 charges for insurance; (ii) attorneys fees or other collection  
3 costs; or (iii) check cashing.

4 (d) Include any of the following provisions in any document  
5 provided or signed in connection with a refund anticipation  
6 loan or refund anticipation check, including the loan  
7 application or agreement:

8 (i) A hold harmless clause;

9 (ii) A waiver of the right to a jury trial, if  
10 applicable, in any action brought by or against the  
11 consumer;

12 (iii) Any assignment of wages or of other compensation  
13 for services;

14 (iv) A provision in which the consumer agrees not to  
15 assert any claim or defense arising out of the contract, or  
16 to seek any remedies pursuant to Section 35 of this Act;

17 (v) A waiver of any provision of this Act. Any such  
18 waiver shall be deemed null, void, and of no effect;

19 (vi) A waiver of the right to injunctive, declaratory,  
20 or other equitable relief; or

21 (vii) A provision requiring that any aspect of a  
22 resolution of a dispute between the parties to the  
23 agreement be kept confidential. This provision shall not  
24 affect the right of the parties to agree that certain  
25 specified information is a trade secret or otherwise  
26 confidential, or to later agree, after the dispute arises,

1       to keep a resolution confidential.

2       (e) Take or arrange for a creditor to take a security  
3 interest in any property of the consumer other than the  
4 proceeds of the consumer's tax refund to secure payment of a  
5 refund anticipation loan.

6       (f) Directly or indirectly, individually or in conjunction  
7 or cooperation with another person, engage in the collection of  
8 an outstanding or delinquent refund anticipation loan for any  
9 creditor or assignee, including soliciting the execution of,  
10 processing, receiving, or accepting an application or  
11 agreement for a refund anticipation loan or refund anticipation  
12 check that contains a provision permitting the creditor to  
13 repay, by offset or other means, an outstanding or delinquent  
14 refund anticipation loan for that creditor or any creditor from  
15 the proceeds of the consumer's tax refund.

16       (g) Facilitate any loan that is secured by or that the  
17 creditor arranges to be repaid directly from the proceeds of  
18 the consumer's State tax refund from the Illinois State  
19 treasury.

20       (815 ILCS 177/30 new)

21       Sec. 30. Rate limits for non-bank refund anticipation  
22 loans.

23       (a) No person shall make or facilitate a refund  
24 anticipation loan for which the refund anticipation loan  
25 interest rate is greater than 36% per annum. The refund

1 anticipation loan interest rate shall be calculated as set  
2 forth in Section 5. Any refund anticipation loan for which the  
3 refund anticipation loan interest rate exceeds 36% per annum  
4 shall be void ab initio.

5 (b) This Section does not apply to persons facilitating for  
6 or doing business as a bank, savings bank, savings and loan  
7 association, or credit union chartered under the laws of the  
8 United States or this State.

9 (815 ILCS 177/35 new)

10 Sec. 35. Applicability to certain entities. No obligation  
11 or prohibition imposed upon a creditor, a person, or a  
12 facilitator by this Act shall apply to a bank, savings bank,  
13 savings and loan association, or credit union operating under  
14 the laws of the United States or this State.

15 (815 ILCS 177/40 new)

16 Sec. 40. Violation. A violation of this Act constitutes an  
17 unlawful practice under the Consumer Fraud and Deceptive  
18 Business Practices Act.

19 Section 25. The Interest Act is amended by changing Section  
20 4.1a as follows:

21 (815 ILCS 205/4.1a) (from Ch. 17, par. 6406)

22 Sec. 4.1a. Charges for and cost of the following items paid

1 or incurred by any lender in connection with any loan shall not  
2 be deemed to be charges for or in connection with any loan of  
3 money referred to in Section 6 of this Act, or charges by the  
4 lender as a consideration for the loan referred to in this  
5 Section:

6 (a) hazard, mortgage or life insurance premiums,  
7 survey, credit report, title insurance, abstract and  
8 attorneys' fees, recording charges, escrow and appraisal  
9 fees, and similar charges.

10 (b) in the case of construction loans, in addition to  
11 the matters referred to in clause (a) above, the actual  
12 cost incurred by the lender for services for making  
13 physical inspections, processing payouts, examining and  
14 reviewing contractors' and subcontractors' sworn  
15 statements and waivers of lien and the like.

16 (c) in the case of any loan made pursuant to the  
17 provisions of the Emergency Home Purchase Assistance Act of  
18 1974 (Section 313 of the National Housing Act, Chapter B of  
19 Title 12 of the United States Code), in addition to the  
20 matters referred to in paragraphs (a) and (b) of this  
21 Section all charges required or allowed by the Government  
22 National Mortgage Association, whether designated as  
23 processing fees, commitment fees, loss reserve and  
24 marketing fees, discounts, origination fees or otherwise  
25 designated.

26 (d) in the case of a single payment loan, made for a

1 period of 6 months or less, a regulated financial  
2 institution or licensed lender may contract for and receive  
3 a maximum charge of \$15 in lieu of interest. Such charge  
4 may be collected when the loan is made, but only one such  
5 charge may be contracted for, received, or collected for  
6 any such loan, including any extension or renewal thereof.

7 (e) if the agreement governing the loan so provides, a  
8 charge not to exceed the rate permitted under Section 3-806  
9 of the Uniform Commercial Code-Commercial Paper for any  
10 check, draft or order for the payment of money submitted in  
11 accordance with said agreement which is unpaid or not  
12 honored by a bank or other depository institution.

13 (f) if the agreement governing the loan so provides,  
14 for each loan installment in default for a period of not  
15 less than 10 days, a charge in an amount not in excess of  
16 5% of such loan installment. Only one delinquency charge  
17 may be collected on any such loan installment regardless of  
18 the period during which it remains in default. Payments  
19 timely received by the lender under a written extension or  
20 deferral agreement shall not be subject to any delinquency  
21 charge.

22 Notwithstanding items (k) and (l) of subsection (1) of  
23 Section 4 of this Act, the lender, in the case of any nonexempt  
24 residential mortgage loan, as defined in Section 1-4 of the  
25 Residential Mortgage License Act of 1987, other than a high  
26 risk home loan as defined in Section 10 of the High Risk Home

1 Loan Act, shall have the right to include a prepayment penalty  
2 that extends no longer than the fixed rate period of a variable  
3 rate mortgage provided that, if a prepayment is made during the  
4 fixed rate period and not in connection with the sale or  
5 destruction of the dwelling securing the loan, the lender shall  
6 receive an amount that is no more than:

7 (1) 3% of the total loan amount if the prepayment is  
8 made within the first 12-month period following the date  
9 the loan was made;

10 (2) 2% of the total loan amount if the prepayment is  
11 made within the second 12-month period following the date  
12 the loan was made; or

13 (3) 1% of the total loan amount if the prepayment is  
14 made within the third 12-month period following the date  
15 the loan was made, if the fixed rate period extends 3  
16 years.

17 This Section applies to loans made, refinanced, renewed,  
18 extended, or modified on or after the effective date of this  
19 amendatory Act of the 95th General Assembly.

20 Where there is a charge in addition to the stated rate of  
21 interest payable directly or indirectly by the borrower and  
22 imposed directly or indirectly by the lender as a consideration  
23 for the loan, or for or in connection with the loan of money,  
24 whether paid or payable by the borrower, the seller, or any  
25 other person on behalf of the borrower to the lender or to a  
26 third party, or for or in connection with the loan of money,

1 other than as hereinabove in this Section provided, whether  
2 denominated "points," "service charge," "discount,"  
3 "commission," or otherwise, and without regard to declining  
4 balances of principal which would result from any required or  
5 optional amortization of the principal of the loan, the rate of  
6 interest shall be calculated in the following manner:

7 The percentage of the principal amount of the loan  
8 represented by all of such charges shall first be computed,  
9 which in the case of a loan with an interest rate in excess of  
10 8% per annum secured by residential real estate, other than  
11 loans described in paragraphs (e) and (f) of Section 4, shall  
12 not exceed 3% of such principal amount. Said percentage shall  
13 then be divided by the number of years and fractions thereof of  
14 the period of the loan according to its stated maturity. The  
15 percentage thus obtained shall then be added to the percentage  
16 of the stated annual rate of interest.

17 (Source: P.A. 95-691, eff. 6-1-08.)

18 Section 30. The Consumer Fraud and Deceptive Business  
19 Practices Act is amended by adding Section 2NNN as follows:

20 (815 ILCS 505/2NNN new)

21 Sec. 2NNN. Violations of the Tax Refund Anticipation Loan  
22 Reform Act. Any person who violates the Tax Refund Anticipation  
23 Loan Reform Act commits an unlawful practice within the meaning  
24 of this Act.

1           Section 97. Severability. The provisions of this Act are  
2           severable under Section 1.31 of the Statute on Statutes.

3           Section 99. Effective date. This Act takes effect upon  
4           becoming law."